

TOMAS N. JOSON III, PETITIONER, VS. NARCISO S. NARIO, LUIS T. SANTOS, IN HIS CAPACITY AS SECRETARY OF LOCAL GOVERNMENTS, AND SENDON O. DELIZO, IN HIS CAPACITY AS JUDGE OF THE RE...

G.R. No. 91548. July 13, 1990

Ponente: NARVASA, J.

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NARVASA, J.:

Whether or not the office of Vice-Governor of Nueva Ecija was rendered vacant by the voluntary resignation of the person duly elected thereto during the 1988 local elections, is the principal issue involved in this special civil action of certiorari. The position is now contested by said Vice-Governor, Narciso Nario -- who withdrew his resignation a few days after tendering it -- and the petitioner Tomas Joson III, the Sangguniang Panlalawigan member who obtained the highest number of votes in the same local elections of 1988, and who, upon Nario's resignation, assumed the position of Vice-Governor.

The controversy originated from the indefinite sick leave that the incumbent Governor of Nueva Ecija, Eduardo L. Joson, had to take on December 7, 1989, thus creating a temporary vacancy in his Office. As Vice-Governor, Nario took over as Acting Governor pursuant to the Local Government Code (B.P. Blg. 337).[1] But as fate would have it, Nario himself fell ill shortly afterwards, and so executed a "waiver" of his "right" to the office of Governor reading as follows:[2]

“December 18, 1989

Effective December 19, 1989, I hereby expressly waive my right to assume the position of Acting Governor of Nueva Ecija in favor of Senior Board Member Tomas N. Joson III.

s/t/ NARCISO S. NARIO

Vice Governor.”

Joson forthwith took his oath as Acting Governor, on December 19, 1989.[3]

Four (4) days later, apparently feeling that his illness had worsened, Nario sent a letter to the Secretary of Local Governments tendering his resignation as Vice-Governor of Nueva Ecija.[4]His letter reads as follows:

”December 22, 1989

Hon. Luis T. Santos

* * * *

(Thru Hon. Tomas N. Joson III,

Acting Governor of Nueva Ecija

City of Cabanatuan)

Sir:

For reasons of poor health, I hereby respectfully tender my voluntary resignation as Vice-Governor of Nueva Ecija effective after the close of office hours today, December 22, 1989.

Very truly yours,

s/t/ NARCISO S. NARIO

Vice Governor."

The following day, Acting Governor Joson took his oath of office as Vice-Governor of Nueva Ecija.[5] Then on December 26, 1989, he sent an official communication (a 1st indorsement) to Secretary Santos: (a) forwarding the resignation of Vice-Governor Nario, and (b) advising of his assumption of the office of Vice-Governor "pursuant to the provisions of Section 49 (1) of Batas Pambansa Blg. 337." [6]

Having in the meantime discovered, after undergoing further medical examination, that his illness was not as serious as originally feared, and having thus been convinced of his physical fitness to resume work, Nario wrote to Secretary Santos on January 2, 1990, withdrawing his "Letters of resignation as Vice Governor of Nueva Ecija and waiver as Acting Governor," and requesting that they be considered "as without legal force and effect." [7] Secretary Santos acted promptly on Nario's letter. On January 3, 1990, he sent Nario two (2) communications. The first, [8] after noting the contents of Nario's letter of January 2, 1990, advised him that -

" * * for all legal intents and purposes, we consider you as the Vice Governor of the Province of Nueva Ecija, and as such, you shall discharge the powers, duties and functions appurtenant thereto and such other as may be prescribed by law."

The second contained the following designation and directive: [9]

"In view of the temporary incapacity of the Provincial Governor of Nueva Ecija, Hon. Eduardo L. Joson, on account of physical cause, pursuant to the provisions of Section 52 of the Local Government Code (BP Blg. 337), you, as vice governor, are hereby designated as acting provincial governor of Nueva Ecija and, as such, shall exercise the powers, duties and functions of the office during the period prescribed by law."

On the same day, January 3, 1990, Nario took his oath as Acting Provincial Governor before Secretary Santos, after which the latter wrote a third letter, this time addressed to petitioner Joson as "First Sangguniang Panlalawigan Member." [10] The letter reads as follows:

"In view of the assumption of office of Provincial Governor of Nueva Ecija by Vice-Governor Narciso S. Nario, you are hereby directed to cease and desist from discharging any and all powers, duties and functions appertaining to the office of Provincial Governor."

It further appears that on the same day, January 3, 1990, Secretary Santos also sent a telegram to the Provincial Commander of Nueva Ecija of the following tenor: [11]

"I HAVE TODAY DESIGNATED VICE GOVERNOR NARCISO NARIO AS ACTING GOVERNOR OF NUEVA ECIJA DUE TO TEMPORARY INCAPACITY OF GOVERNOR EDUARDO JOSON AND WOULD APPRECIATE YOUR ASSISTANCE IN EFFECTING HIS ORDERLY AND PEACEFUL ASSUMPTION OF OFFICE.

THANK YOU."

Joson reacted by filing with the Regional Trial Court at Cabanatuan City, on January 4, 1990, a petition for

"prohibition and injunction, with prayer for restraining order -- docketed as Civil Case No. 746-AF.[12] He succeeded in obtaining on the same day a "status quo order" from the Executive Judge, Hon. Sendon Delizo.[13] Hearing was set on January 12, 1990. Oppositions were presented in due course by the Solicitor General, in representation of Secretary Luis T. Santos,[14] and by the lawyers of Acting Governor Nario.[15] Thereafter, and after conducting a hearing on January 12, 1990 as scheduled,[16] Judge Delizo rendered judgment on January 15, 1990, dismissing Joson's petition and lifting the temporary restraining order issued earlier.[17]

In his Decision, His Honor, citing *Punsalan v. Mendoza*, 140 SCRA 153, ruled that "(i)n our jurisdiction acceptance is necessary for resignation of public office to be operative and effective, otherwise, the officer is subject to penal provisions of Art. 238 of the Revised Penal Code;" and, invoking *Rosales v. Court of Appeals*, 165 SCRA 344, further declared that "petitioner (Joson) in instituting the present action had deviated (from) the doctrine of exhaustion of administrative remedies, thereby rendered (rendering) this action pre-mature."

On January 17, 1990, Joson filed with this Court a petition for review on certiorari basically praying for judgment -

- 1) reversing the decision of respondent Judge dated January 15, 1990;
- 2) declaring illegal and without force and effect, Nario's withdrawal of his voluntary resignation and sustaining Joson's assumption of the positions of Vice-Governor and Acting Governor of Nueva Ecija;
- 3) declaring null and void the designation of Nario as Acting Governor of Nueva Ecija made by Secretary Santos on January 3, 1990.

The petitioner would have this Court adopt his theory that "since the Local Government Code does not provide as to when the voluntary resignations of Vice-Governors shall become effective" -? unlike the case of a sanggunian member whose resignation takes effect and operates as a vacation of his position only upon acceptance of the resignation "by the sanggunian concerned" -- -Nario's resignation "should be construed to be effective on the date specified in the resignation, without need of acceptance." [18] He adverts to the omission of the Rules and Regulations Implementing the Local Government Code to "provide the mechanism for the resignation of a Vice-Governor," attributing this "to the fact that the Code clearly provides for succession in case of resignation (of a vice-governor)," i.e., "the member of the Sangguniang Panlalawigan who obtained the largest number of votes in the last elections shall ipso jure succeed to the office of the Vice-Governor," a clear indication, in his view, that acceptance of the latter's resignation "is no longer necessary." Petitioner further claims that Nario's acts, coupled with his awareness of the assumption by Joson of the office of Vice-Governor, clearly establish "his intention to totally abandon said office," and constitute an "absolute relinquishment" thereof. [19]

The petitioner also submits that his case falls within one of the exceptions to the rule on exhaustion of administrative remedies, i.e., it involves "a purely legal question."

The decided weight of authority is that "apart from legal provision, * * mere presentation of resignation does not work a vacancy, and a resignation is not complete until accepted by proper authority; "[20] " * * and until acceptance by proper authority, the tender or offer to resign is revocable," unless otherwise provided by statute." [21] This is not to say that a public officer may not resign. Mechem says that he "may certainly resign, but without acceptance his resignation is nothing, and he remains in office." He is, therefore, so far as the rights of third persons are concerned, not only still clothed with authority, but is subject to the burdens of the office, and he may be compelled to perform the duties, and is liable for their non-performance, as before." [22]

The rule rests on "the obvious dictates of public policy," Mechem states, stressing that -[23]

" * * 'As civil officers are appointed for the purpose of exercising the functions and carrying on the operations

of the government, and maintaining public order, a political organization would seem to be imperfect which should allow the depositories of its power to throw off their responsibilities at their own pleasure. This certainly was not the doctrine of the common law. In England, a person elected to a municipal office was obliged to accept it and perform its duties, and be subjected himself to a penalty by refusal. An office was regarded as a burden which the appointee was bound, in the interest of the community and of good government, to bear. And from this it followed of course that, after an office was conferred and assumed, it could not be laid down without the consent of the appointing power.

So it is said by Chief Justice Ruffin of North Carolina, 'It is not true that an office is held at will of either party. It is held at the will of both.* * The public has a right to the services of all citizens, and may demand them in all civil departments as well as in the military. Hence, there are on our statute books several acts to compel men to service in offices. Every man is obliged, upon a general principle, after entering his office, to discharge the duties of it while he continues in office, and he can not lay it down until the public, or those to whom authority is confided, are satisfied that the office is in a proper state to be left, and the officer discharged.' "

"In our jurisprudence," this Court has held, "acceptance is necessary for resignation of a public officer to be operative and effective, otherwise the officer is subject to the penal provisions of Article 238 of the Revised Penal Code which states that:

'ART. 238. Abandonment of office or position. - Any public officer who, before the acceptance of his resignation shall abandon his office to the detriment of the public service shall suffer the penalty of arresto mayor.

'If such office shall have been abandoned in order to evade the discharge of duties of preventing, prosecuting, or punishing any of the crimes falling within Title One and Chapter One of Title Three of Book Two of this code, the offender shall be punished by prision correctional in its minimum or medium periods, and by arresto mayor if the purpose of abandonment is to evade the duty of preventing, prosecuting or punishing any other crime.'

"Clearly, a public officer cannot abandon his office or position before his resignation is accepted, but the incumbent official would not be in a position to determine the acceptance of his resignation unless he has been duly notified therefor. It must be noted that respondent Court of Appeals underscored the undeniable fact that while the President's letter of acceptance was dated October 6, 1972, it was completely processed only on October 20, 1972 and officially received by Judge Ruiz on October 21, 1972. Thus, respondent Court's holding that even if there were strict interpretation as to when Judge Ruiz ceased to be a member of the Judiciary although petitioners maintain that the date of his cessation from office is October 6, 1972, still, his acts before the official notification of acceptance of his resignation are those of a de facto officer, and therefore, valid, is correct." [24]

In another case, this Court affirmed the same doctrine, commented on by Mechem and others, supra, that "without acceptance ** (an officer's) resignation is nothing, and he remains in office; * * (and that) "as far as the rights of third persons are concerned, not only (is he) still clothed with authority, but (he) is subject to the burdens of the office, ** may be compelled to perform the duties, and is liable for their non-performance * * ." In *Punsalan v. Mendoza*, supra, the Court held implicitly but no less clearly that the effectivity of a public official's resignation depends not on such much on its terms, e.g., "effective at the pleasure of the President," or at a particular time or on the happening of a particular contingency, but as a legal proposition, on acceptance thereof by the proper authority. For, quite obviously, such appropriate authority can disregard the terms of the official's resignation, and as easily reject it as accept it; and obviously, too, "(a)bandonment by the incumbent of his office before acceptance of his resignation is punishable under the Revised Penal Code."

The respondent Judge was thus correct in refusing to issue the writ of prohibition sued for by petitioner Joson. It was not within the power of respondent Nario to dictate the time of the effectiveness of his resignation, or

otherwise impose conditions thereon. That was the prerogative of the Secretary of Local Governments, as the proper authority to act thereon. It was well within the Secretary's power and discretion to accept or reject the resignation. Nario therefore continued as Vice-Governor despite his tender of resignation and despite his absence from office for a few days on account of sickness. Never having lost the office of Vice-Governor, it was also lawful and logical for him to assume the position of Acting Governor, temporarily vacant due to the infirmity of the incumbent, as he eventually did on instructions of the Secretary of Local Governments.

The conclusion thus reached makes unnecessary the Court's ruling on any other point.

WHEREFORE, the petition for review on certiorari is DENIED, and the judgment thereby challenged is AFFIRMED, with costs against the petitioner.

IT IS SO ORDERED.

Fernan, C.J., Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

[1] Rollo, pp. 3, 85, 124

[2] Id., pp. 3-4, 30, 85, 125

[3] Id., pp. 4, 85, 125

[4] Id., pp. 4, 32, 85, 125

[5] Id., pp. 4, 33, 86

[6] Id., pp. 4-5, 34

[7] Id., pp. 5, 56, 86, 125-126

[8] Id., p. 57

[9] Id., pp. 5, 58, 126

[10] Id., pp. 5-6, 86-87, 126. N.B. Joson claims that the letter "has not yet been received" by him as of date of his petition.

[11] Id., pp. 6, 35

[12] Id., pp. 7, 24-29, 126-127

[13] Id., pp. 6-7, 36

[14] Id., pp. 7, 37-45

[15] Id., pp. 7, 46-55, 87

[16] And the filing of memorandum by petitioner (Rollo, pp. 61-69)

[17] Rollo, pp. 7, 18-23, 87

[18] Id., p. 11

[19] Id., pp. 11-12

[20] McQuillin, E., The Law of Municipal Corporations, 3rd Ed., 1949, vol. 3, p. 443

[21] Dillon, JF., Commentaries on the Law of Municipal Corporations, Vol. 1, pp. 723, 1911

[22] Mechem, F., A Treatise on the Law of Public Offices and Officers (1889), 263-264, citing Chief Justice Ruffin

[23] Mechem, F., op cit., pp. 261-262 inter alia citing "Mr. Justice Bradley of the Supreme Court of the United States"

[24] Gamboa v. Court of Appeals, 108 SCRA 1

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